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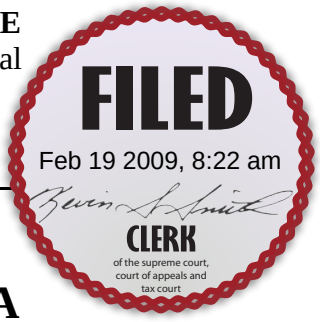

IN THE COURT OF APPEALS OF INDIANA

ORLANDIS BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A04-0811-CR-646
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0705-FC-137

February 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Orlandis Brown appeals from his sentence after his conviction for Nonsupport of a Child, as a Class C felony, following a guilty plea. Brown raises a single issue for our review, which we restate as whether Brown's sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

Between November 19, 1998, and April 17, 2007, Brown failed to pay $41,758.77 of court-ordered child support. On May 2, 2007, the State charged Brown with nonsupport of a child, as a Class C felony. On October 22, 2007, Brown entered into a plea agreement with the State that left his sentencing "up to the discretion of the Court." Appellant's App. Vol. I at 17.

On June 19, 2008, the trial court accepted Brown's plea and held a sentencing hearing. At that hearing, the State demonstrated that the full amount of Brown's arrearage was in excess of $74,000 and that Brown had a prior conviction for nonsupport of a child. The court noted that "this is probably the worst case of nonpayment support, if not one of them, the worst case with [seventy-]some thousand dollars owing." Transcript at 26. The court then stated:

> I agree with [defense counsel that] I don't like to send people to jail for this. If this were a civil action based on the testimony I've heard today I'd probably find him not in contempt of court because he tried to do what he could and I'd have to hear more evidence to be sure . . . . [B]ut the fact of the matter is he's not going to pay support and we either have these laws to enforce or we don't and if this one isn't enforced, what kind of message does that send out to somebody else? Just because I perceive that Mr. Brown is a nice guy and agree with [the defense counsel's] assessment of

> his abilities, it doesn't take away from my responsibility to hear . . . what message it would send if I did what [the defense counsel] would like me to do. I think—it saddens me also and I take no pleasure in it but I think [the State is] entitled in this case to what [it has] recommended. If not this case, what case? I sentence you to eight years in prison, sir. The aggravating factors being this is your second conviction and the amount of support that it showed [is] in excess of $70,000 . . . .

Id. at 26-27.[1] This appeal ensued.

DISCUSSION AND DECISION

Brown argues that his sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a

[1] Brown asserts that these statements from the trial court were an improper "personal[,] philosophical[,] or political message" that should not have been used to aggravate his sentence. Appellant's Brief at 6. But Brown's assessment lacks context. The trial court merely informed Brown's trial counsel that the court was bound to follow the law and, given the nature and circumstances of Brown's offense, that an aggravated sentence was justified. Hence, the trial court's statements are not analogous to those in Gibson v. State, where the trial court ordered the maximum sentence after suggesting that the law itself was too lenient. 856 N.E.2d 142, 149 (Ind. Ct. App. 2006).

defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

Brown received the maximum sentence of eight years for his Class C felony conviction. See Ind. Code § 35-50-2-6(a) (2006). In ordering that sentence, the trial court recognized the scope of Brown's offense, namely, that his total arrearage was in excess of $70,000, as an aggravating factor. The court also identified Brown's prior conviction for nonsupport of a child as an aggravator. The court did not identify any mitigating factors.

Brown asserts that his sentence is inappropriate in light of his character and, most notably, his guilty plea.[2] "Generally, a defendant's guilty plea is entitled to some mitigating weight, although the amount of such weight may vary from case to case." Gibson, 856 N.E.2d at 148. "A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and extends a benefit to the State and to the victim or the victim's family by avoiding a full-blown trial." Id. However, "a guilty plea does not automatically amount to a significant mitigating factor." Powell v. State, 895 N.E.2d 1259, 1262 (Ind. Ct. App. 2008), trans. denied. "For example, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one." Id.

[2] Brown does not present a separate argument that the trial court abused its discretion in identifying, or failing to identify, aggravators and mitigators. As such, we do not review that possibility. We also note that the trial court's assignment of weight to aggravators and mitigators is not reviewable on appeal. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

Here, Brown pleaded guilty without the benefit of a bargain, which can be indicative of an acceptance of responsibility for his crime. See Gibson, 856 N.E.2d at 148. But the State's evidence against Brown was substantial, which could equally indicate that Brown's decision to plea was merely pragmatic. See Powell, 895 N.E.2d at 1262. In any event, Brown's appellate argument aside, his guilty plea is not the end of the analysis regarding his character. Indeed, Brown has a prior conviction for nonsupport of his child, as a Class D felony, which undermines his assertion that he has accepted responsibility for this crime. And Brown's overall criminal history—thirteen total convictions since 1985, including two felonies—is extensive and reflects a generally poor character.

Brown does not challenge the inappropriateness of his sentence in light of the nature of his offense. As such, we note that "it would be within this court's discretion to determine that [the appellant] has waived his request for this court to review his sentence under Appellate Rule 7(B)." Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008). "[R]evision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of his offenses and his character." Id. (emphasis original).

Nonetheless, the nature of Brown's offense demonstrates that he owed an arrearage in excess of $70,000. In Jones v. State, this court stated as follows:

> The trial court calculated Jones' [child support] arrearage to be $ 83,608.25. We have concluded that the trial court erroneously calculated the amount of arrearage and have remanded for a recalculation of the same. However, the amount of Jones' arrears is astounding even with the reduction and will remain several times more than the statutory minimum of $10,000 (now $15,000) for the offense to be a Class C felony. It indicates a longstanding

> pattern of nonpayment and failure to accept responsibility for his child. Therefore, we cannot conclude that the trial abused its discretion in relying upon the amount of the arrearage to impose the maximum sentence on the conviction.

812 N.E.2d 820, 826 (Ind. Ct. App. 2004). While Jones was in the context of the trial court's abuse of discretion, the same rationale applies in our review under Appellate Rule 7(B). Here, as in Jones, the record "indicates a longstanding pattern of nonpayment and failure to accept responsibility." Id. Brown has shown a chronic failure to meet his support obligation. Accordingly, Brown's eight-year sentence is not inappropriate in light of the nature of his offense or his character.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.